



# OPINION

The Defendant entered a plea of guilty to DUI, <sup>1</sup> but explicitly reserved with the consent of the State and of the court the right to appeal a certified question of law that is dispositive of the case.<sup>2</sup> The certified question relates to whether the trial court was correct in overruling the Defendant's motion to suppress all evidence introduced against the Defendant because of an illegal stop and arrest. We conclude the trial judge was correct in overruling the Defendant's motion to suppress.

It is necessary to address only a few facts for purposes of this appeal. A police officer who was working an undercover assignment observed the Defendant, who was obviously intoxicated, leave a local club and get into his automobile. The undercover officer called the county sheriff's department on his cellular phone, but the sheriff's department did not have a deputy available to respond to the call. The undercover officer followed the Defendant and then telephoned the Cookeville Police Department. A Cookeville policeman was dispatched to respond to the call. The undercover officer stayed on his cellular phone with the Cookeville Police Department while he followed the Defendant. The Cookeville police officer who was dispatched caught up with the Defendant, observed the Defendant's erratic driving, stopped the Defendant and arrested him for DUI. The Cookeville police officer was more than one mile beyond the Cookeville corporate limits at the time he first observed the Defendant and stopped him.

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<sup>1</sup>Tenn. Code Ann. § 55-10-401.

<sup>2</sup>Tenn. R. Crim. P. 37(b).

The Defendant filed a motion to suppress all evidence gathered after he was stopped because the Cookeville police officer "arrested him more than a mile from the jurisdiction of Cookeville in violation of TCA 6-54-301." This statute provides as follows:

Extension of police authority beyond limits. -- The police authority of all incorporated towns and cities shall extend to a distance of one (1) mile from the lawful corporate limits thereof, for the suppression of all disorderly acts and practices forbidden by the general laws of the state; provided, that such jurisdiction of an incorporated town or city shall not be hereby extended beyond the limits of the county in which any part of such town is situated, or so as to come within one (1) mile of any other incorporated town or city.

Tenn. Code Ann. § 6-54-301.

The police officer who arrested the Defendant was on duty, in uniform and driving a Cookeville police car at the time he turned on the blue lights and pulled the Defendant over. At the hearing on the motion to suppress, the officer was asked "you didn't arrest him as a private citizen, you arrested him as a police officer, didn't you?" The officer answered, "yes, sir, I was on duty at the time." None of the officer's observations of the Defendant took place within a mile of the corporate limits of Cookeville.

The State argues that the police officer could act pursuant to the statute which authorizes a "citizen's arrest", which provides as follows:

Arrest by private person -- Grounds. -- (a) A private person may arrest another;

- (1) For a public offense committed in his presence;
- (2) When the person arrested has committed a felony, although not in his presence; or
- (3) When a felony has been committed, and he has reasonable cause to believe that the person arrested committed it.

Tenn. Code Ann. § 40-7-109.

Our supreme court addressed a similar situation in State v. Johnson, 661 S.W.2d 854 (Tenn. 1983). In Johnson, the Defendant argued that a deputy sheriff acted without authority because he was outside his home county at the time he

arrested the Defendant for a felony. The court held that under the "citizen's arrest" statute, the deputy, even if limited to the authority of a private person, was authorized to arrest the Defendant. Id. at 859.

Our supreme court has subsequently stated, "It is basic statutory law in this state that a private person may arrest another for an offense committed in the presence of the arresting individual, or for a felony not committed in his presence." State v. Smith, 695 S.W.2d 954, 959 (Tenn. 1985).

The Defendant points out that both Johnson and Smith involved the arrest of someone charged with a felony. Because the Defendant in the case sub judice was arrested for a misdemeanor, the Defendant argued this case is distinguishable. We do not believe this is a meaningful distinction. The statute clearly authorizes a private person to arrest another person for any public offense committed in his presence. The Defendant also argues that the officer in the case sub judice was on duty and stated that he was acting as a police officer at the time. Again, we do not believe the distinction is meaningful. We conclude that a police officer does not give up the right to act as a private citizen when he is off duty or out of his jurisdiction. See State v. Carey Wayne Fullerton, No. 02-C-01-9206-CC-00132, Carroll County (Tenn. Crim. App., Jackson, filed June 30), cert. denied (Tenn. 1993).

We conclude that the Defendant herein was lawfully arrested by the city policeman even though the arrest was made outside of the officer's jurisdiction. We point out that it is clear that the officer had probable cause to stop the Defendant and to arrest him for DUI. Because he acted outside of the police authority of the City of Cookeville, the officer acted as a private person and as such, may have acted at his own peril. We also observe that, under the circumstances presented herein, it is good

public policy to encourage a police officer to stop an apparently intoxicated driver who is endangering both himself and the public.

We thus conclude that the Defendant was lawfully stopped and arrested on charges of DUI. Therefore, the trial judge was correct in overruling the Defendant's motion to suppress evidence gathered as a result thereof.

The judgment of the trial court is affirmed.

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DAVID H. WELLES, JUDGE

CONCUR:

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JOHN H. PEAY, JUDGE

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PAUL G. SUMMERS, JUDGE